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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. CRYSTAL LEE PARKER, Defendant and Appellant.	F060839 (Kern Super. Ct. No. BF128010A) **O P I N I O N**

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John R. Brownlee, Judge.

Marilyn G. Burkhardt, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and A. Kay Lauterbach, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Dawson, J., and Franson, J.

A jury convicted appellant, Crystal Lee Parker, of voluntary manslaughter (Pen. Code, § 192, subd. (a)), a lesser included offense of the first degree murder offense charged in count 1, and found true a personal use of a deadly weapon enhancement (Pen. Code, § 12022, subd. (b)(1)).

On August 13, 2010, the court sentenced Parker to an 11-year term, the upper term of 11 years on her manslaughter conviction and a stayed one-year term on the arming enhancement.

On appeal, Parker contends the court committed *Batson/Wheeler*[1] error. We will affirm.

FACTS[2]

During voir dire, the trial court used the six pack method for selecting jurors, i.e., of the 80 jurors in the venire,[3] it seated 12 prospective jurors in the jury box and 6 additional prospective jurors in front of them. After asking questions about hardship and other general matters, the court addressed individual jurors. Prospective juror Marin did not respond to any of these questions. When the court questioned Marin individually, he stated that he was 22 years old, was born in Bakersfield, and lived on the east side of town. Marin was not married, did not have any children, and worked "in the fields" although he was currently unemployed. The prosecutor asked Marin only one question, whether he would "hold the People to some sort of Crime Scene CSI standard" to which Marin replied, "I don't really watch that stuff, no." Defense counsel did not ask Marin any questions.

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1 *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*) and *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*).

2 The facts relating to the underlying offense are omitted because they are not germane to the issues raised on appeal.

3 Defense counsel did not make a record of the ethnic composition of the venire.

When the parties were allowed to exercise peremptory challenges, the prosecutor used his first challenge to strike prospective juror Marin. Defense counsel then indicated that he wanted to make a motion and the court told him that it would take the matter up shortly. When the court took up the matter outside the presence of the jury, the following colloquy occurred:

> "[THE COURT:] Mr. Greene [defense counsel], you … stated that you wanted to put something on the record when counsel bumped juror number six, Mr. Marin. [¶] … [¶]
>
> "MR. GREENE: My understanding of the law now is that there does not need to be a pattern of discrimination in order for a *Batson/Wheeler* motion to be granted. That even the exercise of one peremptory challenge in a racially or ethnically discriminatory matter is sufficient to allow the motion to be granted.
>
> "Mr. Marin was a very quiet, soft-spoken guy who did not stand out in any way on the panel.
>
> "There was no reason that I could perceive for kicking him other than the prosecutor not wanting a Hispanic like Mr. Marin to be on the panel.
>
> "I see a couple other Hispanic names on the panel, but even changing the panel to deprive Miss Parker of the diversity … she's entitled to impacts her right to a fair trial and would serve to grant a *Batson/Wheeler* motion.
>
> "I would ask the Court to [find] a prima faci[e] case of discrimination to make inquiry of the prosecution to judge those reasons that are given.
>
> "Thank you.
>
> "THE COURT: Thank you.
>
> "At this point, Mr. Greene, your *Wheeler/Johnson* motion will be denied.
>
> "It is timely. The question is whether or not a prima facie showing has been established. I don't feel at this point you have shown that the

person essentially excluded is a member of a cognizable group, and [an] inference of discriminatory purposes that challenges are based on a group rather than an individual specific bias.

"Mr. Marin didn't answer a single question until the Court inquired on specifics about individual background. And then if anybody, yourself or Mr. Norris [the prosecutor], questioned him, his answers were, I don't know. He just -- just wasn't much about the guy to hang your hat on.

"I don't find at this point that the prosecution is using a disproportionate number of challenges against a group, striking most of a group, that kind of thing.

"So at this point your motion will be denied." (Italics added.)

After the court granted the prosecutor's request to put on the record his reasons for striking Marin, the following colloquy occurred:

"MR. NORRIS: Thank you, [y]our Honor.

"Mr. Marin -- I was concerned about Mr. Marin for a variety of reasons. For one, his age and his attire indicated that he was 22 years old, his clothing was baggy, and that causes me some concern.

"He indicated that he was unemployed, single with no kids. That's not -- that's not a huge thing.

"His age in and of itself is not a huge thing, but when it's tied in the fact with he's not employed, he's not in school, that becomes profoundly compelling in my -- in my estimation.

"Also, just his appearance, in general, I found rather troubling.

"And also the way he reacted during voir dire, both during my own questions and the Court's questions.

"I believe at one point the Court even kind of in a joking sort of manner made reference to him, something like, how you doing, Mr. Marin, or still awake over there, or words to that effect. I don't recall the Court's exact words. But Mr. Marin was being very quiet during the whole thing, and that also caused me considerable concern.

"THE COURT: All right.

> "MR. GREENE: In order to not have been deemed waiving my objection, now that the prosecutor has offered an explanation, I would repeat my motion and ask the Court to reconsider [its] ruling.
>
> "THE COURT: Motion is denied at this point, Mr. Greene. The same ruling the Court had stated before, Mr. Norris' representation why he's bumped number six."

Prospective juror Ramirez did not respond to any of the court's general questions. When the court questioned her individually, Ramirez stated that she was not married and did not have any children. She worked as an operations consultant for Verizon Wireless in Visalia, was currently living in Visalia and Wasco, and she had lived in Kern County for 21 years. When the prosecutor was allowed to question Ramirez, he began by noting that she had a soft voice and that he had a hard time understanding her answers to the court's questions. After the court instructed Ramirez to raise her voice, Ramirez stated, in response to the prosecutor's questions, that she lived in Wasco but moved to Visalia because of her job; she graduated from a state university with a degree in marketing; and she would be able to serve on the jury even though it would require a commute of an hour and a half to Bakersfield, which would be "a bit of a hassle[.]"

Prospective juror Muriel stated, in response to some of the court's general questions, that she served on a jury in a criminal case in 2003 and again in 2006 and that both juries reached verdicts. One jury experience was fine, but the other one gave her a headache because she felt overwhelmed by the jury instructions and did not have a command of the legal terms. However, she felt better about serving on a jury after the court told her that the jury instructions had been rewritten in a manner that made them more understandable to a lay person. One of Muriel's relatives was a correctional officer.

When the court asked the venire whether they or any family members or friends had been the victim of a crime, Muriel stated that her brother's car had been broken into and his records stolen. She also stated that around 1996, when she was 10 years old, her older sister's husband was murdered in Delano but she did not remember any of the

details except that no one was arrested for the murder. However, nothing about that incident or the one involving the break in of her brother's car would affect her being fair to both sides.

Under questioning by defense counsel, Muriel stated that one of the previous cases in which she served as a juror involved a man accused of trying to cash a bad check. Muriel further stated that if the deliberations lasted for several days, it would become a frustrating experience for her like her previous jury experience but she would be able to do what the law required of her.

In response to questions by the prosecutor, Muriel stated that she never met her brother-in-law who was murdered because she was only 10 years old at the time and her sister was much older and that the murder did not hurt her at all because "it" was not very close to her. The murder, however, affected her father. The family talked about the murder right after it happened but no one could point a finger at anybody. Muriel had pretty much forgotten about the murder until the court asked the question about being a victim of a crime. She did not have any grievance against law enforcement even though they did not find the person responsible for the murder.

Muriel majored in liberal arts in college and did not take any criminal justice classes. When the prosecutor asked why not, she responded that that was a good question and that "criminal justice just didn't really light [her] fire." When she was on a jury, the jurors had a hard time agreeing, including on the meaning of reasonable doubt, and that left a "bad taste in [her] mouth."

Muriel also related an incident when her brother was detained by a campus security guard. According to Muriel, one day after her brother exited his car and began walking to class, a campus security guard drove his car onto the sidewalk next to him to investigate a woman's report that Muriel's brother may have broken into her car. Her

brother felt that it was unnecessary for the guard to drive up to him on the sidewalk and that the guard could have parked his car on the street and called him over.

The following day when voir dire resumed, after the court advised the prosecutor that the People had the next peremptory challenge, the prosecutor stated that he accepted the panel at that time. After defense counsel struck a juror, the prosecutor used his second peremptory challenge to strike Ramirez and his fourth peremptory challenge to strike Muriel.

Defense counsel objected and the court excused the jury. The following colloquy then occurred:

> "[MR. GREENE:] Mr. Norris has exercised three challenges -- not in a row, but three challenges to young Hispanics whose responses were no different, that I could tell, than any of the other jurors.
>
> "Miss Muriel -- I believe Miss -- well, the individual -- the young gal with the blue dress whose name -- I seemed to have lost my notes somewhere.
>
> "MR. NORRIS: Ramirez.
>
> "MR. GREENE: And then Mr. Marin way back in seat number six when we started.
>
> "Even though the Court denied my motion at that time, it certainly has been strengthened by the last couple of challenges in a row.
>
> "And I will submit it to the Court on that."

When the court allowed the prosecutor to put his reasons for striking the three Hispanic jurors on the record, the following colloquy occurred:

> "MR. NORRIS: Your Honor, with respect, again, to Mr. Marin from yesterday, in a nutshell, the young man looked like a gang member, quite frankly. Came in here with very baggy clothing. He had a stroll that looked somewhat gangster'esque. He might not be a gang member, but he, quite frankly, appeared to look like one.

"He certainly did not look like the kind of person I would ever want to leave on the jury. That's the reason why I kicked him. Along with his age, of course. He's, I think, 22 years old with very limited life experience.

"I also got rid of Miss -- let's see -- Miss Ramirez, who is actually a year younger than Mr. Marin. She's only 21, and only had very limited life experience. And I'm concerned about that.

"I do have two other jurors on the panel, one of whom I believe is Hispanic. That would be juror number one, and then -- I believe his name is (1955929), and then I have another younger juror, Mr. (1882849), on there, as well.

"Both of them I am electing to keep, despite their age, and not challenge for cause. Both of them appear to be somewhat professional or at least going in that direction.

"Mr. (1882849) did a variety of things that impressed me. He indicated, number one, that he does not drink. That was, I think, in response to something that Mr. Greene asked him.

"He also -- I noted this morning when the jury was filing in, he held the door opened for all the other jurors.

"When the bailiff let him through, he was actually the last person to come up he said, ['']thank you, sir.['] Which, again, impressed me with his courtesy in deference and, quite frankly, maturity.

"Mr. (1955929) also indicated that he is a nursing student, which anybody in nursing or medicine also indicates to me, even though they might be youthful, does indicate a certain degree of maturity and professionalism.

"Now, with respect to Miss -- Miss Ramirez, she's 21 years old, she just moved out of Wasco where she had lived. I have to admit, I'm also a little bit uncomfortable with Wasco itself. I just finished a murder case next door in Department 5 where my victim and victim's family were from Wasco. And the things they told me about the people in that town and their criminality did not -- did not sit terribly well with me.

"So I would have to kind of look with a certain degree of skepticism about anybody from Wasco at this point.

"But with respect to her age, that was really the overriding factor. She's 21 years old, single, with no children.

"Finally, with respect to Miss Muriel, she is also quite young. I think I missed her exact age, but I'm guessing also early 20s. She indicated that she's also desirous to become a teacher, which is something that in and of itself would not be an automatic exclusion, but it certainly doesn't [bode] well in my mind in terms of how somebody would sit as a juror.

"She has a degree in liberal studies, but did not take any classes with respect to criminal justice. That was also something that I thought was interesting.

"I talked to her a bit about that during voir dire, and I thought her explanations were somewhat disingenuous. In fact, she even said that's a good question, and she couldn't really give an answer.

"My concern is that the real answer is she's not terribly pro law enforcement.

"She indicated that her own family member, I believe it was her sister, was murdered in 1996. But did not seem terribly -- terribly upset about it, and seemed to kind of minimize any kind of concern about that. That was another concern I had.

"And, frankly, also, during voir dire she was discussing a situation involving her brother in which someone else accused her brother of breaking into their car, and she had problems with the way campus police stopped their car and questioned him, which also indicated certain potential hostility towards law enforcement.

"So for those reasons, [y]our Honor, I did kick those people….

"For the record, also, [y]our Honor, has the Court indicated as to whether or not it's making a prima facia finding or not?

"THE COURT: No. The Court hasn't indicated, but the Court will not make a prima facie finding at this point.

"MR. GREENE: Can I address that?

"THE COURT: Sure, Mr. Greene. Go ahead.

"MR. GREENE: …

"First off, I just want the record to be clear, and I ask the Court to make factual findings of what Mr. [Marin] actually looked like because we're making a record that I don't think is -- it's factually accurate. [¶] … [¶]

"Mr. Marin had a flattop a couple of inches off of his hair -- his head. He was not wearing baggy clothes, as far as I could tell. He was wearing a gray pin -- a gray polo shirt and normal jeans. He looked shy. He had a little, tiny mustache. He looked like a normal American born Hispanic farm worker, as far as I could tell.

"I couldn't smell the slightest taint of gang appearance from this end of the table.

"And I'd ask the Court to at least make some findings [so] the record's clear.

"I would have made a motion if he came in with a shaved head, a wife beater, and baggy pants hanging around his waist.

"THE COURT: I don't recall that, Mr. Greene. I don't recall the shaved head or a wife beater T-shirt or baggy pants, but I've got to be honest with both of you, I don't recall what he was wearing, but it did not strike me as being gang attire, for what it's worth.

"MR. GREENE: Now -- and I love the record, by the way, that we're making regarding this motion. Because if you take this type of juror that Mr. Norris is saying he did not want on the panel, and you just translate it into real world-ese, it's pretty easy to figure out. He's saying he wants -- he's picking people because they are young, uneducated, one of them comes from Wasco. They don't have a great deal of life experience. So let's flip that on its head. What we are looking for, apparently, are older, highly educated, successful people who presumably live in the southwest Bakersfield or northwest Bakersfield, and we're using code words here.

"Now, it's kind of like the advertising or marketing people say we reached the urban market. Well, they don't have to say black. They say urban.

"What we're looking -- what Mr. Norris is looking for is the jury that's calculated to convict Miss Parker. People that are not young Hispanic, you know, working McDonald's, students in school. We're looking for people who own businesses, older Anglos, people that are more likely to vote for a conviction.

"I would note -- and I thought Mr. Norris was at least honest bringing this up, one of the people he kicked had suffered a murder in the family. Normally, the most pro prosecution you can get, but that doesn't fit the profile that Mr. Norris is looking to have on this jury.

"This type of engineering of the jury is exactly what *Wheeler* was designed to prevent. And just because Miss Parker is an Anglo, the cases are extremely clear you can't say here's the jury I want to convict this person because I think they're more conservative, more likely to convict.

"I'd ask the Court to really grant the *Wheeler* motion at this point. Thank you.

"THE COURT: All right. Mr. Greene, he has stated that he plans to leave two young jurors on there, so one is -- I believe he stated he was from the Philippines, so not Hispanic.

"MR. NORRIS: That's right.

"THE COURT: Technically.

"Number one.

"Number two, he's got juror number three (1882849) on there. Young, appears to be Anglo male also in his early 20s.

"Some notes that I made regarding Ramirez and Muriel.

"Ramirez had a very difficult time speaking up. She was very hard to hear, number one. She rarely said anything unless directly questioned. And we could barely hear her. A number of times the reporter had to ask her to speak up so we could get her to say something or hear what she was saying, number one.

"Number two, Muriel also stated that her previous jury experience -- she stated that she had a very difficult time dealing with reasonable doubt, which could be a problem sitting as a juror in another criminal case.

"So for those reasons, Mr. Greene, I will accept Mr. Norris' representation. I'll find that your motion is timely, but a prima facie showing has not been established. You failed to show that the persons excluded are members of a cognizable group, and an inference of discriminatory purposes that challenges are based on a group rather than individual or specific bias."

DISCUSSION

Parker contends that whether the prosecutor made a prima facie case of discrimination is a moot issue because: 1) by specifying that he was making a record, the prosecutor effectively asked the court to rule on his explanation and have this case be treated as a first stage/third stage *Batson* hybrid, and 2) like the trial courts in *People v. Lenix* (2008) 44 Cal.4th 602 (*Lenix*) and *People v. Mills* (2010) 48 Cal.4th 158 (*Mills*), the trial court here ruled on the ultimate question of intentional discrimination. We will reject these contentions.

> "Both the state and federal Constitutions prohibit the use of peremptory challenges to remove prospective jurors based on group bias, such as race or ethnicity. [Citations.] When the defense raises such a challenge, these procedures apply: 'First, the defendant must make out a prima facie case "by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." [Citations.] Second, once the defendant has made out a prima facie case, the "burden shifts to the State to explain adequately the racial exclusion" by offering permissible race-neutral justifications for the strikes. [Citations.] Third, "[i]f a race-neutral explanation is tendered, the trial court must then decide ... whether the opponent of the strike has proved purposeful racial discrimination." [Citation.]' [Citations.]" (*People v. Davis* (2009) 46 Cal.4th 539, 582 (*Davis*).)
>
> "'Though proof of a prima facie case may be made from any information in the record available to the trial court, we have mentioned "certain types of evidence that will be relevant for this purpose. Thus the party may show that his opponent has struck most or all of the members of the identified group from the venire, or has used a disproportionate number of his peremptories against the group. He may also demonstrate that the jurors in question share only this one characteristic—their membership in the group—and that in all other respects they are as heterogeneous as the community as a whole. Next, the showing may be supplemented when appropriate by such circumstances as the failure of his opponent to engage these same jurors in more than desultory voir dire, or indeed to ask them any questions at all. Lastly, ... the defendant need not be a member of the excluded group in order to complain of a violation of the representative cross-section rule; yet if he is, and especially if in addition his alleged victim is a member of the group to which the majority of the remaining

jurors belong, these facts may also be called to the court's attention.'" [Citations.]" (*Davis*, *supra*, 46 Cal.4th at p. 583.)

In *People v. Zambrano* (2007) 41 Cal.4th 1082, 1105, the Supreme Court stated: "Even where the trial court has not found a prima facie case of discrimination, which would require the prosecutor to state reasons for the challenged excusals, it is helpful, for purposes of appellate review, to have the prosecutor's explanation. We therefore encourage court and counsel in all *Wheeler/Batson* proceedings to make a full record on the issue. We stress, however, that the prosecutor is not *obliged* to state his reasons before the court has found a prima facie case. Until that time, the defendant carries the sole burden to establish an inference of discrimination. At this early stage, the prosecutor is not compelled to provide information which the defendant might then employ to argue the existence of a prima facie case. [Citation.] *Moreover, the prosecutor's voluntary decision to state reasons in advance of a prima facie ruling does not constitute an admission or concession that a prima facie case exists*." (*Id*. at p. 1105, fn. 3, overruled on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22, third italics added.) In accord with *Zambrano*, we reject Parker's contention that by stating the reasons for exercising his peremptory challenges against the three Hispanic jurors, the prosecutor effectively asked the court to rule on the merits of those reasons.

In *Lenix*, the trial court requested the prosecutor's reasons for the peremptory challenges. After the prosecutor responded, the court stated, "'... I do not find those challenges to be motivated because of the fact that any of the jurors excused were members of a minority group but rather for other reasons not motivated by any kind of ethnicity or membership in any particular minority group, so I'm going to deny the *Wheeler* motion.'" (*Lenix*, *supra*, 44 Cal.4th at p. 611.) In light of these facts, the *Lenix* court held that the question of whether defendant established a prima facie case was moot. (*Id*. at p. 613, fn. 8.) In *Mills*, even though the trial court found that the defense had not made a prima facie case of discrimination, it nevertheless "passed judgment on

the prosecutor's actual reasons for the peremptory challenges … expressly noting that the court was 'satisfied … from the explanation given by the prosecutor' that the motivation for the challenges was not based on race." (*Mills, supra*, 48 Cal.4th at p. 174.)

Unlike the trial courts in *Lenix* and *Mills*, each time the trial court here ruled on defense counsel's *Batson/Wheeler* motions, it expressly stated that it found that defense counsel had not made a prima facie case. It also did not rule on the validity of the prosecutor's reasons for the challenge. Thus, we also reject Parker's contention that the issue whether defense counsel made a prima facie case is moot.

> "'Subject to rebuttal, a presumption exists that a peremptory challenge is properly exercised, and the burden is upon the opposing party to demonstrate impermissible discrimination against a cognizable group.' [Citation.] '[T]he burden rests on the defendant to "'show that the totality of the relevant facts gives rise to an inference of discriminatory purpose.'" [Citations.] [¶] ... [A] prima facie burden is simply to "produc[e] evidence sufficient to permit the trial judge to draw an inference" of discrimination. [Citation.]' [Citation.] '[W]e review the trial court's denial of a *Wheeler/Batson* motion deferentially, considering only whether substantial evidence supports its conclusions.' [Citation.] As defendant, himself, states, we examine the entire record for evidence to support the trial court's ruling and, 'If the record "suggests grounds upon which the prosecutor might reasonably have challenged" the [prospective] jurors in question, we affirm. [Citation.]' [Citation.] What defendant seems to fail to appreciate is that the foregoing encompasses *two different ways* in which we may uphold the trial court's denial of a *Wheeler/ Batson* challenge. First, we uphold the denial if an examination of the relevant statistics and pattern of the excusals, or other facts, such as whether defendant is also a member of the group excused, the prosecutor engaged in desultory or no questioning of the prospective jurors in question and whether their only commonality is their membership in a cognizable group [citation], provide substantial evidence to support the trial court's finding that a prima facie case has not been made, as in [*People v.*] *Carasi* [(2008)] 44 Cal.4th [1263,] 1294 and 1295 and *People v. Kelly* (2007) 42 Cal.4th 763, 780 (*Kelly*). *In addition to this*, we affirm by examining the record for race-neutral grounds upon which the prosecutor might have challenged the prospective jurors in question. [Citations]" (*People v. Neuman* (2009) 176 Cal.App.4th 571, 579-580 (*Neuman*), fns. omitted.)

The only evidence cited by defense counsel in support of his *Wheeler/Batson* motion was that the prosecutor used three peremptory challenges to exclude three Spanish surnamed jurors. This was insufficient to show a discriminatory exclusion of Hispanics from the jury.[4] (Cf. *People v. Hoyos* (2007) 41 Cal.4th 872, 901 [court held that the excusal of three out of four Hispanics, in a case where the defendant was also Hispanic, did not necessarily create a prima facie case and that the excusal of all members of a cognizable group is not necessarily conclusive to such a showing].)

Further, in attempting to establish a prima facie case, defense counsel responded to the prosecutor's reasons for striking the three Hispanic prospective jurors, but he did not point to any evidence in the record undermining these reasons. Instead, defense counsel merely argued that the prosecutor's stated reasons for striking these prospective jurors showed that he was trying to get people on the jury who were likely to convict which to defense counsel meant older Anglos who owned businesses.

Defense counsel did not make a record of how many jurors in the venire were Hispanic. Consequently, the record does not support Parker's claim that the prosecutor used his peremptory challenges to eliminate most, if not all, the Hispanic prospective jurors in the venire. Nor does it show that the prosecutor used a disproportionate number of his peremptories against that group. (Cf. *People v. Lancaster* (2007) 41 Cal.4th 50,

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[4] In support of his contention that he made a prima facie case of discrimination, Parker argues that the "court's own rationale for striking the prospective jurors in question were not valid." Parker then cites several of the court's comments and argues that they were not valid reasons for the court to strike the three prospective jurors at issue. For example, Parker cites the court's comment that prospective juror Marin did not answer "a single question until the Court inquired on specifics about individual background" and argues that this simply meant there was nothing unsuitable about Marin that would preclude him from serving on the jury. However, Parker's arguments in this regard are irrelevant in determining whether he made a prima facie case because the prosecutor, not the court, struck the three prospective jurors at issue and Parker fails to explain how these arguments relate to this issue.

73, 76 [court labeled as "meager" defendant's attempt to make a prima facie showing based only on assertion that three African-American women had been peremptorily excused by the prosecutor and that, in defense counsel's opinion, all three were the type of jurors both sides wanted].)

Moreover, Parker does not appear to be Hispanic, i.e., a member of the group of which the prospective jurors at issue belong, and this is a factor which supports the trial court's ruling. (*Neuman*, *supra*, 176 Cal.App.4th at p. 581.) Additionally, the prosecutor did not engage in desultory voir dire of two of the prospective jurors at issue and the three prospective jurors at issue shared more than the singular characteristic of being Hispanic in that all three were relatively young, which limited their life experiences.

Further, a review of the record discloses reasons why the prosecutor might have challenged the three prospective jurors at issue. All three prospective jurors were in their early twenties.[5] Thus, their youth and their limited life experiences provided grounds upon which the prosecutor might have challenged all three jurors at issue. (*Neuman*, *supra*, 176 Cal.App.4th at p. 587.) All three prospective jurors were soft spoken, particularly Marin, who was exceptionally quiet and spoke only when spoken to. Further, Marin dressed in loose clothing and to the prosecutor appeared to be a gang member.[6] Prospective juror Ramirez would have had to commute approximately an hour and a half from Visalia to Bakersfield in order to serve on the jury. Prospective juror Muriel stated that she did not like the way the campus security investigated a woman's apparently

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5 Prospective juror Ramirez did not state her age on the record. However, it can reasonably be inferred from her statement that she had lived in Kern County for 21 years, that she was around 21 years old.

6 Although the day after Marin was dismissed, defense counsel challenged the prosecutor's statements that Marin wore baggie clothes and looked like a gangster, the previous day when the prosecutor struck Marin, defense counsel did not challenge the prosecutor's statement at that time that Marin was wearing baggy clothes.

unfounded complaint that her brother broke into the woman's car. She also provided a puzzling response to her brother-in-law's murder that occurred when she was 10 years old and she admitted that her prior service on one jury proved to be a frustrating experience during which she felt overwhelmed by the instructions and suffered from a headache. These were all reasons that would have justified the prosecutor's peremptory challenges of the three prospective Hispanic jurors. Accordingly, we conclude that the record supports the court's finding that defense counsel failed to establish a prima facie case of group discrimination.

DISPOSITION

The judgment is affirmed.